IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY EIGHTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 5991 of 2005

Between:

M/s. J. D. Electronics, H.No. 4-1-825, J.N. Road, Abids, Hyderabad,
Rep. by its Managing Partner, Sri Dharamchand Sethia.

..... PETITIONER

AND

Employees' Provident Funds Organization, Andhra Pradesh, Barkatpura,
Hyderabad-27, Rep,. by its Assistant Provident Fund Commissioner,
(Enforcement),

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to call for the records from the respondent and issue an appropriate Writ, Order or Direction, particularly one in the nature of Writ of Mandamus, declaring that the Order passed by the respondent in proceedings No. AP/19507 dt. 7-3-2005, which was signed on 10-3-2005 as illegal, unjust, contrary to law, contrary to the order passed by this Hon'ble Court in W.P. No.2344 of 1990, dt. 23-2-1990, without determining applicability under 7-A and without jurisdiction and also in violation of Articles 14, 16 and 21 of the Constitution of India, and grant all consequential benefits, and pass other order or orders as this Hon'ble Court may deems fit and proper under the circumstances of the case.

Counsel for the Petitioner : MR. A.K.JAYAPRAKASH RAO

Counsel for the Respondent : MR.R.N.REDDY (SC FOR EMPLOYEES PF ORG.)

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.5991 OF 2005

ORDER

The petitioner earlier filed W.P.No.2344 of 1990 questioning the alleged action of the respondents in seeking to recover the P.F. contributions by clubbing the petitioner establishment with other associates. The said writ petition was disposed of by this Court by order dated 23-02-1990, thereby quashing the order impugned in the said writ petition and leaving it open to the respondent – Regional Provident Fund Commissioner to decide the dispute under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, 'the Act') after giving an opportunity of hearing to the petitioner and pass a speaking order dealing with all the objections raised. The petitioner states that though there was a direction by this Court to complete the enquiry expeditiously, the matter was kept pending for a long time and ultimately an order was passed on 10-08-2004 under Section 7-A of the Act. The petitioner contends that the said order, which was passed after more than 15 years, was not only contrary to the orders of this Court in W.P.No.2344 of

1990, but the same was also biased apart from being arbitrary and contrary to law and in violation of the principles of natural justice. Accordingly, the petitioner filed an application under Section 7-B of the Act to review the said order. Pending the said proceedings, since the respondent was trying to take coercive steps, the petitioner filed W.P.No.16202 of 2004. This Court disposed of the said writ petition by order dated 10-09-2004 observing that the petitioner can raise all the grounds before the respondent and that a speaking order shall be passed on the review petition after giving due opportunity to the petitioner and further held that till the Review Petition is disposed of, the respondent shall not take any coercive steps for recovery of the amount pursuant to the order dated 10-08-2004. Thereafter, the respondent passed the impugned order dated 7-03-2005 determining that a sum of Rs.17,22,952/- is due from the petitioner for the period from 8/1985 to 3/2000 as determined earlier vide proceedings dated 10-08-2004 and directed the petitioner to pay the said amount within 10 days.

The said order is under challenge in this writ petition on various grounds.

I have heard the learned Counsel for both the parties and perused the material on record.

The learned Counsel for the petitioner vehemently contended that since the respondent failed to consider the objection raised by the petitioner with regard to the applicability of the Act and also with regard to the rate of contribution, he has no jurisdiction to make any determination. The learned Counsel has also reiterated the contention that having kept the matter pending for more than 15 years, the respondent is not justified in passing the impugned order and that the said order is contrary to the order passed in W.P.No.2344 of 1990 apart from being not bona fide, without jurisdiction, arbitrary and illegal.

The learned Standing Counsel appearing for the respondent at the outset raised an objection contending that against the impugned order, an efficacious alternative remedy of Appeal is provided under Section 7-I of the Act, and therefore the writ petition is not maintainable.

I find force in the submission of the learned Standing Counsel for the respondent. Without exhausting the alternative remedy of Appeal provided under the

Statute, the petitioner cannot maintain this writ petition. It is always open to the petitioner to raise all the grounds including the grounds that are urged in this writ petition before the Appellate Authority.

Accordingly, the Writ Petition is disposed of granting leave and liberty to the petitioner to work out the remedy of Appeal as available under Section 7-I of the Act. If any such appeal is preferred within a period of four weeks from today, the same shall be considered and appropriate orders be passed in accordance with law. No costs.

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28th March, 2005.

gbs

To

1. The Assistant Provident Fund Commissioner (Enforcement), Employees' Provident Funds Organization, Andhra Pradesh, Barkatpura, Hyderabad-27.

2. Two CD copies.